IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 230 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

MAHANT MALAVIKABEN DINESHKUMAR

Versus

STATE OF GUJARAT

==========

Appearance :
MR NITIN M AMIN for Applicant
MR SS PATEL APP for Respondent
==========

CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 26/09/2006

ORAL JUDGMENT

[1] The present applicant came to be convicted by the learned Judicial Magistrate, First Class, Ider for the offences punishable under Sections 468 and 417 of the Indian Penal Code. She was sentenced to undergo four months simple imprisonment and to pay fine of Rs.300/- in default to undergo simple imprisonment of 20 days for the offence punishable under Section 417 of the Indian Penal Code, while for the offence punishable under Section 468, she was sentenced to undergo simple imprisonment of one year and to pay fine of Rs.500/- in default to undergo simple imprisonment of 30 days. The judgment and order came to be delivered by Judicial Magistrate, First Class, Ider on 31st January, 1991 in Criminal Case No.481/1988. Against the above mentioned judgment and order, the present applicant filed Criminal Appeal No.7/1991 in the Court of learned Sessions Judge, Sabarkantha at Himmatnagar, but the same came to be dismissed vide judgment and order delivered on 11th May, 1994 by the learned Additional Sessions Judge, Sabarkantha at Himmatnagar and hence the present Criminal Revision Application.

[2] Brief facts of the present case indicate that the present applicant – accused was serving as

primary teacher at the relevant juncture and she was recruited as such on fixed pay. It was the allegation that in the marksheet of Primary Training Course Examination, she made interpolations in the marks obtained and after enhancing marks, the interpolated marksheet was produced before the Education Authority, thus she by committing fraud obtained job as primary teacher. As per further case of the prosecution that by advertisement, applications were invited for such recruitment in which the present applicant applied and was included in select list and she was then appointed and posted as primary teacher on fixed pay. The fact of interpolation in the marksheet came to the notice of the Education Inspector Shri Chaturbhai Ambalal who was stationed at Ider Taluka Panchayat to whom the applicant had submitted the marksheet received from the Board. He found that there were interpolations on the said marksheet and, therefore, he wrote a letter to the District Education Officer. It appears that the then District Education Officer consulted the Board and found that the marks as per the record of the Board did not tally with the marks as submitted through marksheet by the applicant and, therefore, the complaint came to be filed on 17th February, 1988 by

one Shri Vishnuprasad Vithaldas Suthar, concerned Education Area Inspector of Himmatnagar after obtaining necessary opinion of concerned Public Prosecutor, as per the direction of the District Education Officer. Investigation took place and charge-sheet was submitted for the offences punishable under Sections 420 and 468 of the Indian Penal Code, against the present applicant.

[3] The prosecution examined as many as seven witnesses and voluminous documentary evidence was also produced. P.W.1 – Vishnuprasad Vithaldas Suthar, at Ex.19 stated that according to the instruction, he filed a complaint and the facts of the case were that the applicant forged the marks in the marksheet which she submitted before the Education Inspector. In education part-I, the marks were enhanced to 30 from original marks 27, in language part-I marks were enhanced to 24 from marks 20, in social studies, there were 26 marks and those marks were enhanced to 36 marks and in total, there was in fact 287 marks and those marks were interpolated to 303 marks. P.W.2 – Chaturbhai Ambalal, Ex.26 stated that he was Education Inspector at the relevant juncture. Ex.21 marksheet, which was according to the prosecution was

a forged document was submitted by the applicant to him from her possession and he produced that on record at Ex.21. He informed his superior officer about the interpolation in original marksheet vide a report placed on record at Ex.27. P.W.3 – Babuhai Danabhai stated that he was working as junior clerk in Examination Board for PTC of the State and he submitted the copy of the office record at Ex.29 which contained original real marks obtained by the applicant which differed from the marksheet submitted by the applicant at Ex.21. P.W.4 -Jagdishchandra Ambalal Trivedi, stated that he was Education Officer in the said District. He was examined for production of the record in respect of recruitment process pursuant to advertisement given by the Panchayat - the application form submitted by the present applicant and the marksheet attached with the application form by the present applicant, but however, in a very unreasonable manner, he submitted on oath that the said record was not available with his office. P.W.5 – Magansinh Agarsinh is the Head Constable who recorded the complaint. P.W.6 – Baxidan Kishorsinh was the I.O. who submitted charge-sheet. P.W.7 – Kailashbharthi Motibharthi Goswami was the clerk of Education Department of Sabarkantha and he

again stated that the record for the recruitment in respect of the applicant was not available in his office.

[4] From the above oral as well as documentary evidence, the learned Judicial Magistrate, First Class, Ider came to the conclusion that by making amendment in the marks, only the applicant was to be benefited and, therefore, there was no scope for probability of the defence that in absence of the marksheet which was submitted by the applicant along with the application form, it could not be proved by the prosecution that the interpolation made in marksheet at Ex.21 were at the hands of somebody else then the applicant. The learned Judge discussed the evidence of P.W.2 – Chaturbhai Ambalal and came to the conclusion that the applicant had committed offences under Section 415 to r/w. Section 417 instead of Section 420 of the Indian Penal Code as well as under Section 468 of the Indian Penal Code and hence, learned Magistrate convicted the applicant. The learned Appellate Court in toto adopted the reasoning of the learned Judicial Magistrate, First Class, Ider.

[5] In this Criminal Revision Application,

learned advocate Mr.N.M.Amin for the applicant and learned APP Mr.S.S.Patel for the respondent – State were heard at length.

[6] Unfortunately, the record of Criminal Case is not available with this Court and as per the letter of Principal Sessions Judge, Sabarkantha at Himmatnagar which is dated 8th September, 2006, such record was destroyed by the office on 20th May, 1997. However, learned advocate Mr.Amin for the applicant assisted the Court and has prepared a paper book, in all 30 pages, which is taken on record and which shall form part and parcel of this Criminal Revision Application.

[7] Learned advocate for the applicant submitted that this is a case, in which the applicant has been convicted by the trial Court though there is no evidence particularly for making changes in the marksheet or there is no evidence that the applicant derived any benefits and, therefore, the offences under Section 415 and 417 could not be said to have been proved. The prosecution must prove that the applicant must have done something prior to her appointment. Learned advocate for the applicant

submitted that the record which she submitted before appointment, could not be traced out by the Education Department and, therefore, no criminal liability could be attached on her and the learned trial Judge on assumption and presumption convicted the applicant. It is submitted that to prove that the applicant derived benefit by producing forged marksheet, the prosecution must prove select list, which is not proved. It is submitted that the witnesses have admitted that at more than one juncture, verification of the marksheets were done and when the amendment as seen in Ex.21 was apparent, it could not be believed that Education Department could not have taken action for considerably long period. Even P.W.2 – Chaturbhai Ambalal to whom the applicant allegedly submitted marksheet, kept the said marksheet for two months and then made a vague report which is at Ex.27 wherein nothing is mentioned that how the marks and in what details, were interpolated by the applicant. It is submitted that FIR is lodged after two years. In fact, according to the learned advocate for the applicant, with the application for recruitment, the applicant submitted correct marksheet but the prosecution did not produce the same on record and the marksheet which is

produced at Ex.21 which was with P.W.2 – Chaturbhai Ambalal has been interpolated by someone else then the applicant and the applicant has been made a scapegoat. The only presumption in this circumstances could be drawn is, the applicant submitted correct marksheet with application for recruitment. It is, therefore, submitted that this is a case of no evidence against the applicant and both the Courts below have erred in convicting the applicant and within the scope of the revision application, the merits of the matter, to ascertain whether miscarriage of justice has been occurred, must be scrutinized. It is, therefore, submitted that the applicant be acquitted of the charges levelled against her by allowing this Criminal Revision Application and setting aside the judgment and order of both the Courts below. It is, alternatively, submitted that in case, this Criminal Revision Application is dismissed, the applicant be granted benefit of probation under Section 360 of the Criminal Procedure Code or a sentence be reduced in view of the personal circumstances of the applicant as well as having regard to the time gap which has occurred. It is submitted that earlier bench called for the probation report in respect of the

application which is in her favour.

[8] As against that learned APP Mr.S.S.Patel for the respondent – State submitted that the judgment of the trial Court is not based on the assumption or presumption as has been submitted by the learned advocate for the applicant. It is submitted that under Section 114 of the Evidence Act, the Court is empowered to presume certain state of affairs from the record and in this case, the Court has rightly presumed existence of certain facts from the evidence. The attention of this Court was drawn to the evidence of P.W.2 – Chaturbhai Ambalal by which it is proved that Ex.21 was given from the possession of the applicant and applicant only and in the cross-examination, it has also come out that the applicant explained this situation by explaining that she had received Ex.21 marksheet in the same condition from the Board. There are concurrent findings of both the Courts below and those concurrent findings according to the learned APP, cannot be interfered with lightly in this Criminal Revision Application especially in such cases of forgery. It is submitted that ultimately, it must be presumed legitimately that by

making interpolation in the marksheet, it was the applicant and only applicant was to be benefited. It was, therefore, submitted that this Criminal Revision Application is required to be dismissed.

[9] Having heard learned counsels for the parties and going through the record as available with this Court and with reference to the arguments advanced by learned advocate particularly that this is a case of no evidence, it is necessary to refer to the evidence of P.W.2 – Chaturbhai Ambalal. It becomes very clear from his evidence that while inviting applications for the post of teacher along with the application, the copy of the marksheet was to be attached. Surprisingly enough this record is not available in the Education Department. However, it appears from the evidence of P.W.2 – Chaturbhai Ambalal, Ex.26 that after recruitment, each selected candidate was required to submit original marksheet, which they might have received from the board, to Education Inspector for security and, therefore, in pursuance of this principle, the applicant submitted marksheet at Ex.21 for verification to P.W.2 – Chaturbhai Ambalal. In his deposition, P.W.2 – Chaturbhai Ambalal categorically stated that original

marksheet at Ex.21 was submitted by the applicant from her possession. Necessary it is to note here that there is no cross on this aspect and the facts remained proved that the marksheet at Ex.21 was submitted by the applicant to Education Inspector, P.W.2 – Chaturbhai Ambalal. Now the defence is, the interpolation made in Ex.21 was not made by her and it was made by somebody else to make her scapegoat. The opportunity to take this defence flaws from the fact that the copy of the marksheet which applicant submitted along with the application form, could not be traced out by the department and, therefore, with this defence, it is stated that the applicant submitted copy of the correct marksheet along with her application form and that was the only presumption according to the defence which could be drawn from the facts and circumstances. Further defence case was, unless these papers are on record, it could not be said that the interpolation in Ex.21 marksheet was made by the present applicant and, therefore, this is a case of no evidence and the applicant is convicted on a prosecution case without any evidence.

[10] On scrutiny of the record, it is crystal

clear that the defence has no legs to stand so far as the above defence is concerned. Necessary it is to see that in examination-in-cross of P.W.2 – Chaturbhai Ambalal at Ex.26, the defence asked this witness as to whether any explanation in respect of Ex.21 was sought for from the applicant. Reply to this question in cross-examination of P.W.2 – Chaturbhai Ambalal stated that in respect of interpolation in Ex.21 marksheet an explanation was called for from the applicant and she had stated that Ex.21 marksheet was the marksheet which she received from the Board. From this evidence, two things are very clear; one there was no probability at all to make interpolation in the marksheet at Ex.21 by somebody else than applicant because according to this evidence, the accused – applicant admitted that before submitting marksheet at Ex.21 to P.W.2 – Chaturbhai Ambalal, the marksheet at Ex.21 was in the same condition i.e. in the interpolated condition and second circumstance which is made clear by this evidence is the presumption would not be, as defence pleaded but the presumption would be otherwise. The applicant must have submitted the copy of the marksheet as per Ex.21 with the application if she had received Ex.21 marksheet in the condition she

submitted the same to P.W.2. Meaning thereby that the copy of the marksheet though could not be traced out by the department which was submitted by the applicant along with her application, could not be otherwise than the copy of Ex.21. There is no reason to disbelieve P.W.2 and more particularly when this fact is disclosed in his cross-examination that accused explained that she received marksheet at Ex.21 in the same condition from the examination board. There is no substance in the arguments that P.W.2 kept this marksheet with him for two months and then made report and, therefore, the prosecution case is of no evidence. The documentary evidence speaks for itself and the crux of the prosecution case is that for obtaining job of primary teacher, the applicant utilized forged marksheet. The prosecution case is not at all affected merely by delay caused by P.W.2 to notify his Superior Officer nor any dent could be made in the prosecution case only because the FIR came to be filed after two years. The offence if ultimately proved and the delay is not fatal. Such delay casts doubts in prosecution case only when in all probability prosecution case becomes impossible and improbable. Here is not the case that the interpolation in the marksheet at Ex.21 becomes

doubtful on account of filing of late FIR.

[11] On above view of the matter, it could not be said that the judgment and order of the trial Court is perverse and conviction is based upon no evidence. As discussed above, the evidence of P.W.2 and P.W.1 establishes the case beyond doubt against the applicant, even though for the record of recruitment process is not available for the reasons best known to the officers and employee of the concerned department. The presumption is an inference of certain fact drawn from the proved fact. While inferring the existence of a fact from another, the Court is only applying a process of logical reasoning which the mind of a prudent man would do under similar circumstances. Unless, the presumption is disproved or dislodged or rebutted, the Court can treat the presumption as tantamounting to proved fact. Though it may be unsafe to use that presumption to draw yet another discretionary presumption unless there is such statutory compulsion. In this case, it is amply proved that Ex.21 - marksheet was submitted from the possession of the applicant. In cross-examination of P.W.2, it is amply proved that the accused admitted that she had received Ex.21 in an

interpolated condition from the board. The presumption which legitimately could be drawn that the copy which was submitted with the application for recruitment, must be the copy of Ex.21 only and which was not reflecting the correct position of the marks which the applicant obtained in PTC examination, which is very clear from Ex.29 and through the evidence of P.W.3, Ex.28.

[12] In the above mentioned circumstances, the arguments advanced on behalf of the applicant could not be accepted. Likewise the submission made to give benefit to the applicant of probation under Section 360 also cannot be accepted because if in serious case like this one, if the probation is granted, the same would give wrong signal to the society. However, having regard to the personal circumstances of the applicant, the submission made in respect of reduction of sentences must be considered to reasonable extent.

[13] It is submitted that the applicant is female and she has a family with children. There is a time gap of about 20 years from the date of offence till

today. All the children are maintained by the present applicant. She has already lost her job and, therefore, in the interest of justice having regard to pitiable condition the sentences be reduced.

[14] In this view of the matter, while rejecting this Criminal Revision Application on merits and all other aspects, this application is allowed to the extent of the quantum of sentences. So far as the offence punishable under Section 468 is concerned, instead of simple imprisonment of one year and to pay fine of Rs.500/- in default to undergo simple imprisonment of 30 days as imposed by the trial Court, it is directed that this quantum is modified to the extent that for the offences punishable under Section 468, the applicant shall undergo simple imprisonment of five days and to pay fine of Rs.1500/- instead of Rs.500/- imposed by the trial Court, in default shall undergo simple imprisonment of five days. The applicant is entitled to set of under Section 428 of the Criminal Procedure Code for the period which she might have undergone during trial. So far as the offences punishable under Section 415 to r/w. Section 417 is concerned, instead of undergoing sentence of four months and to pay fine

of Rs.300/- in default to undergo 20 days imprisonment, the applicant shall pay fine of Rs.1500/- and in default to undergo simple imprisonment of five days. However, the sentence to undergo imprisonment awarded for four months for this offence by the trial Court is reduced to fine only.

The applicant is given time upto 15th November, 2006 to surrender before the trial Court and bail bonds, if any, submitted by the applicant shall stand cancelled. Rule is partly made absolute as aforesaid and to the aforesaid extent only.

[J. R. VORA,J.]

(vijay)